

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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DATE FILED: 10/9/09

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GLENN STORMAN,

Plaintiff,

-against-

JOEL I. KLEIN in his capacity as Chancellor of the  
New York City Department of Education, NEW  
YORK DEPARTMENT OF EDUCATION,  
JOSEPHINE MARSELLA & DENNIS BOYLES,

Defendants.  
----- x

09 Civ. 0338 (SHS) (AJP)

**REPORT AND RECOMMENDATION**

**ANDREW J. PECK, United States Magistrate Judge:**

**To the Honorable Sidney H. Stein, United States District Judge:**

My prior Report and Recommendation, affirmed by the Court on August 17, 2009, recommended denial of defendants' motion to dismiss because it was not clear whether plaintiff Storman's due process claim arose before or after August 21, 2005 (the applicable statute of limitations date). The parties have now stipulated that plaintiff Storman learned on July 5 and 12, 2005 that he would not be allowed to work summer school because of his unsatisfactory rating. (A copy of the stipulation is attached.) Plaintiff also has consented to entry of summary judgment for defendants on that claim, without prejudice to plaintiff's appeal rights. (Id.)

Accordingly, I recommend that the Court grant summary judgment for defendants on consent and dismiss the complaint in its entirety.

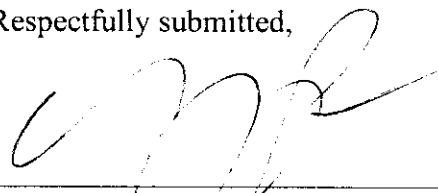
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**FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Sidney H. Stein, 500 Pearl Street, Room 1010, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Stein (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(d).

Dated: New York, New York  
October 9, 2009

Respectfully submitted,



**Andrew J. Peck**  
United States Magistrate Judge

Copies **by fax & ECF** to: John C. Klotz, Esq.  
Daniel Chiu, Esq.  
Judge Sidney H. Stein

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GLENN STORMAN,

Plaintiff,

- against -

JOEL I. KLEIN, in his capacity as Chancellor of the New  
York City Department of Education; NEW YORK CITY  
DEPARTMENT OF EDUCATION; JOSEPHINE  
MARSELLA; and DENNIS BOYLES,

Defendants.  
-----X

**STIPULATION** *[Signature]* *(AJ)*

Docket No. 09 Civ. 338  
(SHS)(AJP)

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that, with respect to plaintiff's due process claim, plaintiff admits that, on Tuesday, July 5, 2005, when plaintiff reported to P.S. 212K for a summer school assignment, he was orally informed that he would not receive an assignment and was prohibited from working summer school for defendant New York City Department of Education in the summer of 2005 because he had received an unsatisfactory rating; and

IT IS FURTHER STIPULATED AND AGREED that, plaintiff further admits that, not later than July 12, 2005, plaintiff received a copy of the unsatisfactory rating in the mail; and

IT IS FURTHER STIPULATED AND AGREED that, as a result of plaintiff's admission that he learned of the unsatisfactory rating in June 2005, plaintiff's first cause of action contained in the Complaint, filed on January 13, 2009, is barred by the statute of limitations in accordance with the Order of Honorable Sidney H. Stein, dated August 17, 2009, which determined that plaintiff's due process claim would be barred by the statute of limitations to the extent it arose before August 21, 2005; and

IT IS FURTHER STIPULATED AND AGREED that, plaintiff disputes the manner in which the Court calculated the statute of limitations for plaintiff's due process claim and the parties now desire to resolve this issue in the interests of judicial economy and to conserve the resources of the parties and without the need for discovery, while preserving plaintiff's right to appeal the August 17, 2009 Order of Honorable Sidney H. Stein; and

IT IS FURTHER STIPULATED AND AGREED that, without prejudice to plaintiff's right to appeal such summary judgment to the United States Court of Appeals for the Second Circuit, plaintiff consents to entry of summary judgment against plaintiff by Honorable Sidney H. Stein dismissing Count One of plaintiff's Complaint on the grounds that this claim is barred by the statute of limitations; and

IT IS FURTHER STIPULATED AND AGREED that, this Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: New York, New York  
September 21, 2009

JOHN C. KLOTZ, ESQ.  
Attorney for Plaintiff  
350 Fifth Avenue, Suite 4810  
New York, New York 10118  
212-630-2600

By: \_\_\_\_\_

John C. Klotz

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for Defendants  
100 Church Street, Room 2-115  
New York, New York 10007  
212-788-1158

By: \_\_\_\_\_

Daniel Chiu  
Assistant Corporation Counsel

SO ORDERED:

\_\_\_\_\_  
U.S.M.J.

HON. ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York

4 My Fax: Mr. Peck  
2009/9/21

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**BY FAX**